IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35212

STATE OF IDAHO,	)	**2010 Unpublished Opinion No. 404**
	)	
Plaintiff-Respondent,	)	**Filed: March 30, 2010**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
MARIA VARGAS-TINOCO,	)	**THIS IS AN UNPUBLISHED**
	)	**OPINION AND SHALL NOT**
Defendant-Appellant.	)	**BE CITED AS AUTHORITY**
	)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Juneal C. Kerrick, District Judge.

Order denying motion to suppress evidence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Elizabeth A. Koeckeritz, Deputy Attorney General, Boise, for respondent.

GUTIERREZ, Judge

Maria Vargas-Tinoco appeals from the judgment of conviction upon her conditional guilty plea to possession of a controlled substance. Specifically, she challenges the district court's denial of her motion to suppress. We affirm.

I.
FACTS AND PROCEDURE

While at the Shilo Inn in Nampa at approximately 1:30 p.m. on an unrelated call, Officer Case of the Nampa Police Department was asked by Deborah Gray, the hotel's manager, to assist her in checking Room 319 as it had not been vacated nearly two hours after the designated checkout time of 12 p.m. Gray told the officer that she and another employee had already knocked loudly on the door, but there had been no answer and the deadbolt (which could only be operated by a guest from the inside) was locked.

Officer Case accompanied Gray to the room, where an employee knocked and then unlocked the deadbolt. The officer entered the room and found Vargas-Tinoco sleeping on a bed. He awakened her, and while speaking with her, noticed a glass smoking device and a small baggie on the nightstand next to the bed. After detaining Vargas-Tinoco, the officer found methamphetamine, marijuana, and drug paraphernalia on the nightstand and a digital scale and brass knuckles in her belongings (which Vargas-Tinoco had indicated were hers and had given him permission to look through).

Vargas-Tinoco was arrested and charged with, along with three other charges, felony possession of a controlled substance, Idaho Code § 37-2732(c)(1). She filed a motion to suppress the evidence discovered in the hotel room, contending that it had been obtained pursuant to an illegal entry. After a hearing, the district court denied the motion concluding that Vargas-Tinoco did not have a reasonable expectation of privacy in the hotel room and, even if she did, exigent circumstances justified the officer's entry. Vargas-Tinoco pled guilty to possession of a controlled substance pursuant to a plea agreement where she reserved her right to appeal the denial of her motion to suppress and the state agreed to dismiss the remaining charges. Vargas-Tinoco now appeals.

II.
ANALYSIS

Vargas-Tinoco contends that the district court erred in denying her motion to suppress because the officer's entry into the hotel room violated her right to be free from unreasonable searches and seizures.

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact which are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

The Fourth Amendment, as well as the Idaho Constitution, requires that all searches and seizures be reasonable. *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000); *State v.*

Metzger, 144 Idaho 397, 399, 162 P.3d 776, 778 (Ct. App. 2007); *State v. Murphy*, 129 Idaho 861, 863, 934 P.2d 34, 36 (Ct. App. 1997). Warrantless searches and seizures are considered unreasonable per se unless they come within one of the few specifically established and well-delineated exceptions to the warrant requirement. *California v. Acevedo*, 500 U.S. 565, 580 (1991); *State v. Henderson*, 114 Idaho 293, 295, 756 P.2d 1057, 1059 (1988); *Metzger*, 144 Idaho at 399, 162 P.3d at 778. However, such constitutional protections apply only to a person's reasonable expectation of privacy--one which the party subjectively held and which society is willing to recognize as reasonable. *Id.*; *State v. Morris*, 131 Idaho 562, 565, 961 P.2d 653, 656 (Ct. App. 1998). *See also State v. Christensen*, 131 Idaho 143, 146, 953 P.2d 583, 586 (1998). As such, a Fourth Amendment analysis involves a determination of whether the defendant has an actual, subjective expectation of privacy and, if so, whether the defendant's expectation of privacy, when viewed objectively, was reasonable under the circumstances. *State v. Wilkins*, 125 Idaho 215, 222, 868 P.2d 1231, 1238 (1994); *State v. Fancher*, 145 Idaho 832, 837, 186 P.3d 688, 693 (Ct. App. 2008). An expectation of privacy is objectively reasonable when it is legitimate, justifiable, and one society should both recognize and protect. *Id.*; *State v. Johnson*, 126 Idaho 859, 862, 893 P.2d 806, 809 (Ct. App. 1995). Such expectation of privacy must be more than a subjective expectation of not being discovered. *Rakas v. Illinois*, 439 U.S. 128, 143 n.12 (1978); *Fancher*, 145 Idaho at 837, 186 P.3d at 693; *State v. Spencer*, 139 Idaho 736, 738-39, 85 P.3d 1135, 1137-38 (Ct. App. 2004). The burden is on the defendant to prove the existence of a legitimate expectation of privacy. *Fancher*, 145 Idaho at 837, 186 P.3d at 693; *State v. Dreier*, 139 Idaho 246, 251, 76 P.3d 990, 995 (Ct. App. 2003).

In concluding that the Vargas-Tinoco did not have a reasonable expectation of privacy in the hotel room, the district court stated:

> The general rule appears to be that a hotel/motel guest does not have a legitimate expectation of privacy in his/her room after the rental period has expired. [*United States v. Bautista*, 362 F.3d 584, 589 (9th Cir. 2004)]; *See People v. Montoya*, 914 P.2d 491 (Ct. App. Colo. 1995); *State v. Ahumada*, 125 Ariz. 315 (Ct. App. 1980); *Commonwealth v. Winfield*, 835 A.2d 365 (Pa. Superior Ct. 2003). However, the Ninth Circuit has recognized an exception to the general rule where the defendant demonstrates a reasonable expectation of privacy after checkout time based upon the policies and practices of the hotel in extending or not enforcing its checkout time. *U.S. v. Dorias*, [sic] 241 F.3d 1124, 1129 (2001). Such a defendant would also have to establish knowledge of and reliance on such policies and practices, since the inquiry is whether a defendant had a subjective expectation of privacy. *See [i]d.*; *Montoya* at 492.

> Here, Officer Case did not enter the motel room occupied by Defendant Tinoco until approximately two (2) hours after checkout. Although Ms. Tinoco testified that that delay would not have been a problem, and that "they" knew that they would get their money from her since she was a former employee, the Court finds that her testimony is not credible. First, as a former employee Ms. Tinoco was not eligible to rent a room at that particular Shilo Inn. Second, there was no evidence presented that Ms. Tinoco was permitted to stay past checkout time in the past. Third, the general practice was for holdover guests to make their arrangements prior to the designated checkout time, and the general practice when prior arrangements were not made was for the motel to "lock out" the guests until the room fee was paid, with occasional exceptions. Fourth, Ms. Tinoco was not in compliance with the Shilo Inn's policy that both co-guests and visitors must be registered. Fifth, in this case the individual who rented the room was nowhere to be found at any time past the designated checkout hour. Finally, there was no evidence presented that Ms. Tinoco in fact intended on July 7, 2007, to remain in Room #319 after the 12:00 noon checkout time as a holdover guest, or that she had the money or financial means to pay for an additional day's lodging, even if Shilo Inn policy had permitted her to do so. She had made no attempt on that date to arrange for a holdover, and in fact was "dead to the world" in a very deep slumber during the time in which a person would reasonably expect to make such holdover arrangements. In reality, at the time Officer Case made entry into Room #319 almost two hours after checkout, Ms. Tinoco was essentially a squatter on the premises: a person not authorized to be there by motel policy, a person who had not made arrangements to remain in Room #319 another day, and a person who has made no showing that she had either the actual intention of staying over an additional day, or the financial means by which that could have been accomplished. The Court concludes that Defendant Tinoco can hardly have a legitimate expectation of privacy in a room where she is present in violation of the motel's policies regarding co-guests and visitors; where she is present in violation of the motel's policies against having former employees stay on the property where they previously worked; and where almost two hours has passed since the designated checkout time, with Defendant having made no attempt to arrange for a holdover stay. Even if Defendant Tinoco can demonstrate that she had a subjective expectation that her activities would be private, the Court concludes that she has failed on the facts adduced to demonstrate the second prong under *Bautista*, that society is prepared to recognize any such expectation by her as reasonable, at least at the time of this particular search. The issue here, then, is not consent on the part of the hotel management, but Defendant's lack of a legitimate privacy expectation at the time of Officer Case's entry.

On appeal, Vargas-Tinoco agrees that the while the general rule is that a hotel guest does not have a legitimate expectation of privacy in her room after the checkout time has passed, the Ninth Circuit has created an exception where the occupant demonstrates a reasonable expectation of privacy after the checkout time based on polices and practices of the hotel in extending or not enforcing the checkout time. *See United States v. Dorais*, 241 F.3d 1124, 1129 (2001). The

entirety of her argument as this principle applies to her case consists of one sentence in the brief: "In the instant case, Ms. Vargas-Tinoco asserts that she has demonstrated a reasonable expectation of privacy in the hotel room after checkout based on her testimony that she used to work there and the hotel knew it would get money from her."

Thus, on appeal, Vargas-Tinoco simply asks us to second-guess the district court's findings of fact--specifically in regard to her credibility in testifying that the "hotel knew that it would get their money from her" based on her previous employment there as well as prior experience. However, Gray directly rebutted Vargas-Tinoco's testimony, stating that she was familiar with Vargas-Tinoco and that as a former employee, hotel policy mandated that Vargas-Tinoco was not even permitted to rent a room on the premises. She further testified that Vargas-Tinoco was "red-flagged" in the computer as a "no re-rent" and that she was not aware whether Vargas-Tinoco had made "holdover" arrangements in the past. Gray also explained that all guests and their visitors were required to register at the front desk--which Vargas-Tinoco had not done--and that according to Shilo Inn's "holdover" policy, a guest who seeks to stay an additional day would need to make arrangements with front desk personnel prior to their designated checkout time. If a guest failed to do so, hotel policy was to "lock" them out of their room until they made arrangements to pay.

On this record, the trial court's ruling that Vargas-Tinoco lacked credibility as to whether hotel policy as it applied to her allowed for "holdovers" appears unassailable. As is well established, the district court is vested with the power to assess credibility and to resolve factual conflicts. We conclude there was substantial evidence in the record for the district court to find that the policies and practices of the Shilo Inn did not allow for Vargas-Tinoco to remain on the premises past the checkout time (either in principle or in practice) and, on that basis, to conclude that Vargas-Tinoco did not have a reasonable expectation of privacy in the hotel room.[1] The district court's order denying Vargas-Tinoco's motion to suppress is affirmed.

Chief Judge LANSING and Judge MELANSON **CONCUR.**

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[1] Since we conclude that the district court did not err in determining that Vargas-Tinoco did not possess a reasonable expectation of privacy in the hotel room, we need not address whether the officer's warrantless entry was justified by exigent circumstances.